

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Statutory Inspector General

OCA FILE

LEG

FROM: E. Norbert Garrett  
Director of Congressional Affairs

EXTENSION

NO. OCA 3242-89

DATE 15 SEP 1989

OIG

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Executive Registry

15 SEP 1989

2.

3. Deputy Director of Central Intelligence

copy

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5. Director of Central Intelligence

15 Sept 9/18

6.

7. Return to Director of Congressional Affairs

9/18

8. DO/OCA

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15 September 1989  
OCA 3242-89

MEMORANDUM FOR: The Director

FROM: E. Norbert Garrett  
Director of Congressional Affairs

SUBJECT: Statutory Inspector General

1. We have just learned that the Senate Intelligence Committee probably will mark up Senator Specter's statutory Inspector General Bill (S. 199) next Thursday (21 September). The staff has stated that Chairman Boren needs to have your views no later than 18 September.

2. The Specter Bill is similar to an earlier Bill (S. 1818) that the Senator introduced in the last Congress. You may recall that you testified before the Senate Intelligence Committee last year in opposition to the original Specter Bill. The new Bill has some significant improvements over the original Bill. For example, the new Bill no longer requires that the Inspector General keep Congress fully and currently informed. The new Bill also spells out criteria for the selection of the Inspector General, including "prior experience in foreign intelligence." The new Bill does not, however, contain language discussed last year that would have allowed you (rather than the President) to appoint or dismiss the Inspector General. A copy of S. 199, and a Congressional Research Service study comparing and contrasting the original Specter Bill with S. 199, are attached at Tab A. I have attached at Tab B a copy of your statement before the Senate Intelligence Committee opposing the original Specter Bill.

3. The Senate Intelligence Committee last year deferred action on a statutory Inspector General to give the Agency time to demonstrate that changes you instituted would improve the quality of the Office of Inspector General. Recently, however, there has been criticism of the quality of certain IG reports. Committee staff informs us that the Specter Bill was well received when discussed at yesterday's business meeting, and that it is likely to be approved. The staff also informs us that the Members support the McCurdy amendment.

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4. Should the Specter Bill be approved by the Committee, it is possible that its provisions could be added to the Senate version of the Intelligence Authorization Bill through a floor amendment. If this should occur, it is entirely conceivable that at Conference the Senate would agree to the McCurdy amendment in exchange for the House agreeing to the statutory Inspector General proposal. We would thus end up with an Intelligence Authorization Bill containing a statutory Inspector General provision and a provision giving the Intelligence Committees mandatory access to the Statutory IG's reports. During my meeting with you, Dick Kerr, Gary Foster, Bill Donnelly, John Pereira and Russ Bruemmer this afternoon, we need to decide how to respond to Senator Boren's request for your views on the Specter Bill.



E. Norbert Garrett

## Attachments

OCA/LEG/ [redacted] (15 Sept 89)

## Distribution:

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*N.B. : I will come with some proposed language for your response.*  
*(OCA is also working on the analysis of the bill requested by Boren [redacted])*

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# S. 199

IN THE SENATE OF THE UNITED STATES

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on Select Committee on Intelligence

# A BILL

To establish an inspector general for the Central Intelligence Agency.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That the Central Intelligence Agency Act of 1949 (50  
4       U.S.C. 403a et seq.) is amended by deleting all after section  
5       16 and adding the following:

6 "INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE  
7 AGENCY

8       “SEC. 17. (a) PURPOSE; ESTABLISHMENT.—In order  
9       to create an objective and effective unit, appropriately ac-  
10      countable to the Congress, to initiate and conduct independ-  
11      ently, inspections, investigation, and audits relating to pro-

1 grams and operations of the Central Intelligence Agency,  
2 there is hereby established in the Central Intelligence  
3 Agency an Office of Inspector General.

4       “(b) APPOINTMENT AND REMOVAL.—There shall be at  
5 the head of the Office an Inspector General who shall be  
6 appointed by the President, by and with the advice and con-  
7 sent of the Senate. This appointment shall be made without  
8 regard to political affiliation and shall be made solely on the  
9 basis of integrity, the security standards of the Central Intel-  
10 ligence Agency and on prior experience in the field of foreign  
11 intelligence. Such appointment shall also be made on the  
12 basis of demonstrated ability in accounting, financial analysis,  
13 law, management analysis, or public administration. The in-  
14 spector general shall report directly to and be under the gen-  
15 eral supervision of the Director of Central Intelligence.

16       “(c) The Director may prohibit the inspector general  
17 from initiating, carrying out, or completing any audit, inspec-  
18 tion, or investigation, or from issuing any subpoena, concern-  
19 ing ongoing operations only, and only if he determines that  
20 such prohibition is necessary to protect vital national security  
21 interests of the United States.

22       “(d) If the Director exercises any power under subsec-  
23 tion (c) of this section, he shall submit an appropriately classi-  
24 fied statement of the reasons for the exercise of the power  
25 within seven days to the Senate Select Committee on Intelli-

1 gence and the House Permanent Select Committee on Intel-  
2 ligence.

3       “(e) The inspector general may be removed from office  
4 only by the President. The President shall immediately com-  
5 municate in writing to the Senate Select Committee on Intel-  
6 ligence and the House Permanent Select Committee the rea-  
7 sons for any such removal.

8       “(f) DUTIES AND POWERS.—(1) It shall be the duty  
9 and responsibility of the inspector general appointed under  
10 this Act—

11           “(A) to provide policy direction for and to con-  
12 duct, supervise, and coordinate independently, the in-  
13 spections, investigations and audits relating to the pro-  
14 grams and operations of the Central Intelligence  
15 Agency to assure they are conducted efficiently and in  
16 accordance with applicable law and regulations; and

17           “(B) to keep the Director fully and currently in-  
18 formed concerning violations of laws and regulations,  
19 fraud and other serious problems, abuses and deficien-  
20 cies, and to report the progress made in implementing  
21 corrective action.

22       “(2) In the event the inspector general is unable to re-  
23 solve any differences with the Director on the execution of  
24 his duties and powers, he shall report such matter to the

1 Senate Select Committee on Intelligence and the House Per-  
2 manent Select Committee on Intelligence within seven days.

3       “(g) The inspector general shall have the power to issue  
4 subpoenas, as may be necessary, to carry out his work. In  
5 addition, he shall have direct access to all records and direct  
6 and prompt access to the Director when necessary for any  
7 purpose pertaining to the performance of his duties.

8       “(h) REPORTS.—The inspector general shall not later  
9 than June 30 and December 31 of each year, prepare a clas-  
10 sified semiannual report summarizing the activities of the  
11 Office during the immediately preceding six-month period.  
12 Such reports also should include—

13           (i) a certification that such activities have been  
14 carried out in accordance with accepted Federal stand-  
15 ards for inspections, investigations and audits;

16           (ii) a certification that the inspector general has  
17 had full and direct access to all information relevant to  
18 his activities;

19           (iii) a description of any violation of law or willful  
20 violation of regulations, or any evidence of serious  
21 fraud, waste, and abuse, identified during the reporting  
22 period; and

23           (iv) the status of corrective actions taken during  
24 the reporting periods in response to inspector general  
25 recommendations.



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1       “(i) Classified semiannual reports of the inspector gener-  
2 al shall be furnished to the Director who shall transmit them  
3 to the Senate Select Committee on Intelligence and to the  
4 House Permanent Select Committee on Intelligence Repre-  
5 sentatives within thirty days after receipt, together with any  
6 comments he deems appropriate.”.

○

### **Inspector General for the CIA Act of 1989**

Early in the 101st Congress, Senator Arlen Specter introduced S. 199, which would establish an Office of Inspector General in the Central Intelligence Agency.<sup>22</sup> The OIG would be accountable to Congress and could independently conduct inspections, investigations, and audits of the operations and programs of the CIA. And the IG would be appointed by the President, subject to Senate confirmation; removable only by the President; granted direct access to all Agency records; and authorized to conduct audits or investigations and issue subpoenas without interference, except under specified conditions.

### **Similarities Between the IGs Under the Two Recent Bills**

In its fundamental principles, S. 199 is nearly identical to Senator Specter's earlier proposal (in S. 1818, 100th Congress) to create a permanent Office of Inspector General in the Agency; and the basic ingredients of the Office and its head would be the same. Under both bills, the statutory CIA Inspector General would:

- be appointed by the President, subject to Senate confirmation;
- be removed only by the President, who must communicate his reasons to the House and Senate Intelligence Committees;
- submit classified semiannual reports to the Director of Central Intelligence, who must transmit them to the House and Senate Intelligence Committees within 30 days; and
- hold authority to conduct investigations and audits or issue subpoenas without interference from any agency official, except in

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<sup>22</sup> S. 199, 101st Congress. Arlen Specter. Statutory CIA Inspector General Act. Congressional Record, Daily Edition, v. 135, January 25, 1989. p. S104 and S122-S124.

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certain specified matters: The DCI could stop or prevent such an IG activity only for ongoing operations and only to protect vital national security interests; the DCI must report his reasons for exercising such power to the House and Senate Intelligence Committees in 7 days.

A further similarity between the two proposals is what both omit, by comparison to the 1978 IG Act, as amended. Neither bill requires the CIA Inspector General to report suspected violations of Federal criminal law to the Attorney General; neither bill provides a specific appropriations account for the Office; and neither bill grants direct authority to the IG over the office's personnel and resources or to seek outside assistance in performing IG duties.

### **Differences Between the IGs Under the Two Recent Bills**

Despite these key similarities, some noticeable differences exist between the two versions of the CIA Inspector General, regarding the IG's appointment, powers, and reports. The current bill, S. 199, specifies qualifications for the IG's appointment and clarifies, refines, and adds to his powers, by comparison to the first version. The newer provisions governing information reported to Congress, however, are mixed; most add to while one subtracts from the original requirements.

Unlike the original version, the current one spells out specific criteria for the selection of the IG:

This appointment shall be made without regard to political affiliation and shall be made solely on the basis of integrity, the security standards of the CIA and on prior experience in the field of foreign intelligence. Such appointment shall also be made on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, or public administration.

Except for the particular references to the CIA and foreign intelligence experience, these criteria are the same as the ones prescribed for other IGs under the 1978 Inspector General Act.

The powers of the IG would also differ under the two proposals. In the initial bill, the IG is explicitly granted only subpoena power. To this authority, the current bill adds "direct access to all records and direct and prompt access to the Director when necessary for any purpose pertaining to the performance of his duties." The present proposal also provides for a contingency report to the House and Senate Intelligence Committee in "the event the inspector general is unable to resolve any differences with the Director on the execution of his duties and powers . . . "

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Other reporting requirement also differentiate the two bills. Unlike the earlier version, S. 199 explicitly obligates the IG to keep only the Director of Central Intelligence--and not Congress--"fully and currently informed concerning violations of laws and regulations, fraud and other serious problems, abuses and deficiencies, and to report the progress made in implementing corrective action." A separate provision in S. 199 does require such information as part of the IG's semiannual report. This after-the-fact summary account, however, is not the same as keeping Congress "fully and currently informed."

The semiannual reports required under each bill differ, in that S. 199 spells out their contents in more detail. In the initial bill, the IG was simply required to summarize the activities of the Office. In the current bill, the reports are to include:

- a certification that such activities have been carried out in accordance with accepted Federal standards;
- a certification that the IG has had full and direct access to all information relevant to his activities;
- a description of any violation of law or willful violation of regulations, or any evidence or serious fraud, waste, and abuse; and
- the status of corrective actions taken in response to IG recommendations.

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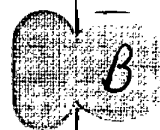
These specifics reiterate the new requirements for semiannual reports that were adopted in the Intelligence Authorization Act for FY 1989 (P.L. 100-453; 102 Stat. 1910-1911).

### Summary Conclusion

Both recent bills to establish a statutory Office of Inspector General in the CIA (S. 1818 in the 100th Congress and S. 199 in the 101st) would grant permanency to the Office and would increase its independence, powers, and capabilities, by comparison to the administrative construct that now exists. In general, the current version of the legislation adds to the authority and independence of the IG above the initial version. The single major exception is that the IG under the current legislation would not be required to keep Congress, along with the Director of Central Intelligence, fully and currently informed. Even with the additions, however, the present proposal still falls short of the full range of powers and protections that have been built into the statutory OIGs under the 1978 Inspector General Act, as amended.

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**STATEMENT OF JUDGE WILLIAM WEBSTER, DIRECTOR OF  
CENTRAL INTELLIGENCE**

[ Judge WEBSTER. Thank you very much, Mr. Chairman. Senator Specter.

I'm pleased to be here today to discuss my views on Section 4 of Senate Bill S. 1818, the National Security Reform Act of 1987, which pertains to the establishment of a statutory Inspector General at the Central Intelligence Agency.

The purpose of the proposal, as I understand it, is to strengthen the independence and objectivity of the Inspector General. As Senator Specter described it, it is to help assure lawful internal compliance on matters which do not come within the purview of congressional oversight. It would add the CIA to the list of Federal agencies which currently have statutory Inspectors General.

Before I provide you with my thoughts on Senator Specter's measure, I would first like to explain briefly what the CIA Inspector General currently does and how the Office of Inspector General is now organized.

The CIA already has an Inspector General who is a senior officer reporting directly to the Director of Central Intelligence and the Deputy Director of Central Intelligence and who is subordinate only to the DCI and the DDCI. In the conduct of his duties, the Inspector General has unlimited and automatic access to all agency records.

The Inspector General currently directs and coordinates the activities of three groups—the inspection staff, the investigation staff and the audit staff. These three groups conduct special investiga-

tions when needed, routine inspections and audits. All elements of the agency, both at headquarters and in the field, are subject to examination. Only the Director of Central Intelligence has the authority to exempt a component or program from an inspection or audit. To the best of my knowledge, no DCI has ever exercised this power.

Before I explain the workings of the three groups under the direction of the Inspector General, let me emphasize that, in addition to his normal inspection, investigation and audit activities, the Inspector General now has much broader policy and management functions within the CIA. As a part of the new responsibilities that I have assigned to that office, he will be directly involved in improving overall agency management, ensuring accountability and discipline, and encouraging the raising of standards and quality of performance throughout the agency.

I see the office of Inspector General as performing another new and perhaps even more critical institutional role, and that is developing our top managers and leaders of tomorrow. Henceforth an assignment of the office of Inspector General will be a necessary and meaningful component in the career development of our brightest and most promising officers. I am personally committed to the goal of identifying and bringing our best people to the office, and I am pleased to say that we are already well on the way towards fulfilling that goal.

The inspection staff, the first of the three groups under the supervision of the Inspector General, conducts periodic investigations of all agency components to ensure compliance with laws and regulations. It also addresses problems brought to its attention and evaluates management effectiveness. In compliance with Executive Orders 12333 and 12334, the Inspector General, and for that matter the General Counsel, will report to the extent permitted by law, to the President's Intelligence Oversight Board any intelligence activities which he has reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. Likewise, the Intelligence Oversight Act, Section 501 of the National Security Act of 1947, requires the agency to report to the Intelligence Committees any illegal intelligence activity along with any corrective measures taken or planned to be taken.

The investigation staff, the second of the three groups handles complaints about employee conduct and reports of possible violations of law, regulations or procedures, and also investigates employee grievances and discrimination complaints. In the past 4 years, this staff has handled an average of two dozen investigations that have culminated in formal reports, and an additional 75 informal inquiries and grievance referrals or consultations per year that do not result in formal reports.

The audit staff performs independent audits of all matters related to the receipt, disbursement, and application of funds and assets available to the agency in accordance with audit standards which the Comptroller General has established. The chief of the audit staff reports the auditors' observations and recommendations to the Deputy Director of the office concerned and to other officials as appropriate. The Deputy Director must reply to audit recommendations within 60 days. If recommendations cannot be re-

solved satisfactorily at operating levels, they may be referred to me through the Inspector General for resolution.

Now as I stated earlier, there are no limitations on the scope of audits and investigations. The investigators, inspectors and auditors have complete access to any information within the CIA and the DCI's staff elements both at headquarters and in the field. Auditors, investigators and inspectors, as well as their supervisors, are granted special clearances when needed to review extremely sensitive compartmented activities.

Despite the many strengths of the investigation process, I discovered that some areas of the Office of Inspector General needed to be improved in the wake of the Iran-Contra affair. As you know, I brought in a special counsel, Russell Bruemmer, to review the agency's performance in the affair. In his report, Mr. Bruemmer, who now serves as the CIA's General Counsel, pinpointed the following problems in the Office of Inspector General.

The number of investigators assigned to the investigation staff were not enough to deal with the demands of a major investigation.

The investigators do not receive formalized training in investigative techniques when they rotate into this assignment.

And the investigators do not record their recollections as verbatim transcripts, signed statements, or formal memoranda for the record.

The report of the Iran-Contra committees had earlier reflected these concerns more generally by stating that the office lacked the manpower, resources, and tenacity to uncover key facts learned in other investigations of that matter.

At the same time, it is important to keep in mind that the Special Counsel noted important strengths within that office. For instance, he determined, in spite of the problems I just described, that the Inspector General's staff performed well in determining the agency's role in the Iran arms sale. In a matter of 6 weeks after the Attorney General's announcement of the sales, the investigation team produced a 40-page report on the agency's role and a 35-page chronology that have been proven to be essentially accurate after many more months of additional testimony.

Nonetheless, in light of the apparent shortcomings of the Office of Inspector General identified by the Iran-Contra committees and my special counsel, I convened a steering group last November composed of senior agency managers to recommend specific ways in which the office could be improved. Its findings mirrored to a large degree those of the Iran-Contra committees and the special counsel. That is, that the office's manpower and the qualifications of its personnel should be strengthened and its investigative staff more rigorously trained to enable it to identify areas of potential impropriety or violations of statutes and regulations better and to identify clearly and deal properly with actual violations of law.

The steering group also determined that there was room for improvement in the role of the Inspector General himself, specifically, that the authority, status and image of the position should be enlarged. Perhaps most important, the Inspector General's relationship with me should be enhanced.

I have already implemented measures that I believe will go a long way toward alleviating the problems that I have noted. Thus



far I have taken steps to ensure that the Inspector General is recognized as being equivalent in rank and position to a Deputy Director, subordinate only to me and to the Deputy Director of Central Intelligence, and have ensured that both his inspection and investigation reports are sent directly to me and to the DDCL.

I have taken steps to increase the staff of the office.

I have expanded the Inspector General's role to include becoming directly involved in improving overall agency management, ensuring accountability and discipline and encouraging the raising of standards and quality of performance within the agency, in addition to conducting his normal investigation, inspection and audit activities.

And I have appointed William Donnelly to head this enhanced Office of Inspector General. Mr. Donnelly is a widely-respected agency officer who, in 33 years with the agency, has compiled an extensive operational, management and administrative background that gives him a unique personal insight into a wide range of agency activities.

Under my tenure the process of defining the duties and responsibilities of the Inspector General will be a continuing and evolutionary process. Some other steps currently under development, but not yet fully staffed, include strengthening agency regulations pertaining to the Inspector General's responsibility; reorganizing the office to include the expansion of the investigation staff; developing training and investigative procedures; and identifying those activities which the Inspector General needs to review from time to time.

Mr. Chairman, I am concerned that enactment of a statutory Inspector General will actually prove to be counterproductive to the effective inspection and investigation process at the CIA. First, the use of the subpoena power could be counterproductive to obtaining all the facts. Administrative actions are not criminal proceedings. Voluntary cooperation is essential in learning the facts as soon as possible and implementing any necessary corrective actions as smoothly as possible.

I should also note that historically the fact that the agency has had no subpoena power is no accident. As a result of a carefully considered decision of the Congress in 1947, the agency was specifically not vested with any subpoena or law enforcement powers. It was concluded then and I respectfully submit that it is true now, that the CIA should not have any law enforcement powers or functions apart from those of our security protective officers who guard agency facilities.

Second, the subpoena power in many cases could not reasonably be used in the circumstances in which the Agency operates. Realistically, the Agency cannot go into court, risking disclosure of sources and methods, to seek a court order to have a contractor with which it has a covert relationship turn over documents. Currently the Department of Justice and the FBI seek subpoenas on the Agency's behalf. This system works well. We have found, however, that there is more than sufficient leverage in the contractual relationship itself. The bottom line is that the Agency investigations are not encumbered by the lack of subpoena power.

Third, the proposed legislation would raise some ambiguity about the statutory authority of the Director of Central Intelligence to protect intelligence sources and methods and the authority of the Inspector General to make independent decisions to release such information. Because the statutory Inspector General would have a significant amount of independence from the DCI, our intelligence sources and foreign liaison services may be reluctant to part with information that will be available to an office independent of the DCI. They are likely to believe, rightly or wrongly, that the Agency will not be able to protect their information. We have a special concern that our foreign intelligence sources may feel that the Agency will not be able to protect their identities and that the personal risk is too great to cooperate with the Agency.

Fourth, I would submit that it is simply unrealistic to expect that establishing a statutory Inspector General will by itself resolve any perceived flaws and deficiencies in that office. In this regard, it is noteworthy that in 1976 the Church Committee concluded that the Agency needed to continue to expand and strengthen its Inspector General staff, but it also pointedly refrained from recommending that the Inspector General be established by statute. The Church Committee recognized, and I believe it remains true today, that the best way to improve the performance of the Office of Inspector General is to get highly qualified and trained people to serve in the office and to make it clear to all employees that they are expected to cooperate fully with the Inspector General or risk severe consequences. I am convinced that we are now on the right track in these areas.

Finally, apart from Senator Specter's proposed legislation, I note that this committee has now formed its own audit group. The Agency is of course fully supportive of this effort and is cooperating with the committee's auditors.

The changes in the duties and perceptions of the Agency's Inspector General and his staff that I have described are significant ones. We are well down the road toward building an effective means of ensuring compliance with laws, regulations, Executive Orders and Presidential Directives. And so I ask that we be given the opportunity to demonstrate the effectiveness of these changes, rather than be forced to live with a system that fails to accommodate this Agency's unique concerns. For CIA, this is the better course to take, and I am convinced that neither I, nor the Congress, will be disappointed.

Mr. Chairman, this concludes my statement. And I am now pleased to answer any of your questions.]